

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SHARON LYNN DOWSON
758 Rustic Lane
Mountain View, CA 94040

Registered Nurse License No. 284260

Respondent.

Case No. 2011-639

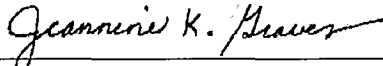
OAH No. 2011031016

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on September 21, 2011.

IT IS SO ORDERED this 22nd day of August, 2011.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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In the Matter of the Accusation Against:

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PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on June 16, 2011, in Oakland, California.

Deputy Attorney General Leslie E. Brast represented complainant Louise R. Bailey, M.Ed., R.N., Executive Officer of the Board of Registered Nursing.

Attorney at Law Mark Cohen represented respondent Sharon Dowson, who was present.

The matter was submitted for decision on June 16, 2011.

FACTUAL FINDINGS

1. The Board of Registered Nursing issued registered nurse license number RN 284260 to respondent Sharon Lynne Dowson on August 31, 1977. The license has been renewed through March 31, 2013. Respondent has no prior disciplinary history.

Criminal Conviction

2. On March 22, 2010, in the Superior Court of California, County of Santa Clara, respondent was convicted, on her plea of no contest, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), and her admission to having a blood alcohol level of 0.15 percent or more. She also admitted to a prior violation of Vehicle Code section 23152 on December 23, 2000, and subsequent conviction in San Mateo County. Respondent was placed on court probation for three years on conditions that included 20 days in county jail (to be served through the

weekend work program). She was also ordered to pay fines, fees, and assessments totaling \$2.175 and to complete a Multiple Offender Drinking Driver Program.

3. The offense took place in Mountain View at 12:30 a.m. on October 17, 2009. Respondent drove her vehicle from her home while under the influence of alcohol. She hit a parked car with enough force to push it onto the sidewalk. The police responded to the call regarding the collision, and arrested respondent for being under the influence of alcohol. The police could find no cause for the accident other than respondent's intoxication. Blood alcohol tests performed at 1:34 and 1:37 a.m. showed blood alcohol levels of 0.20 percent and 0.21 percent.

4. The facts and circumstances surrounding respondent's offense establish that she used alcohol to an extent or in a manner dangerous to herself and the public.

Rehabilitation and Other Evidence

5. Respondent has paid her court-ordered fines and fees. She will complete the Multiple Offender program at the end of June 2011.¹ Her driver's license has been reinstated. She remains on unsupervised probation until March 2012.

6. Respondent is 60 years old. She received her nursing degree from Ohlone College in June 1977. She has worked in various acute care facilities over the years, but her primary employment has been with El Camino Hospital in Mountain View. At El Camino Hospital, respondent worked on a number of different units including orthopedics, and as a float nurse.

7. Respondent left her employment with El Camino Hospital in August 2009 because she was distracted by her marital situation (she and her husband had separated in October 2007), a matter which other nurses had reported to the hospital. Respondent felt both "stress" and "a lot of pressures" at work stemming from the ending of her marriage. The hospital recommended that she undergo counseling. She instead chose to stop working. Respondent maintains that her use of alcohol never impacted her work as a nurse.

8. The October 2009 DUI happened about two months after respondent had stopped working at El Camino. Respondent testified that she had been drinking alcohol earlier in the day at a family wedding in Gilroy. She was driven home from the wedding by her father, and thought she was fine to drive to the grocery store because she had not had alcohol for three hours. Respondent believes she consumed three mixed drinks as well as one-half bottle of wine at the wedding.

¹ A June 15, 2011 Progress Report states that respondent will complete the 18-month program at the end of July. Respondent testified that she has taken an additional makeup class which advanced her completion date to the end of June 2011.

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9. Respondent recognized that she had a problem with alcohol when her youngest son told her that she needed to stop drinking or he would not "be around." She also came to terms with the reality that alcohol was not the answer to her problems.

Respondent started attending Alcoholics Anonymous meetings five days after her October 17, 2009 arrest. She started the program voluntarily, and attended 90 meetings in 90 days. She was subsequently ordered by the court to attend AA, and at that point she began to keep attendance records. (She provided documentation of attendance for the period of December 30, 2009, to May 10, 2010.)

She started working with a sponsor in April 2010. Her sponsor JB testified at hearing that over the next six to eight months the two of them worked through the 12 steps of AA. They attended AA meetings together, had weekly meetings outside of AA, and had frequent telephone conversations. JB has found respondent to have a positive attitude about maintaining sobriety, and to speak honestly with JB. Respondent has been an active volunteer at the AA meetings, including setting up and taking down meetings, making coffee, and meeting with newcomers. JB continues to meet regularly with respondent, but not as intensely as when they were working through the steps. JB has had experience as a sponsor with six women. She believes that respondent will maintain her sobriety if she continues with the AA program of attending meetings, working the steps, and being of service to others.

Respondent continues to attend at least three AA meetings a week. (She presented documentation of attendance from March 30, 2011, to June 15, 2011.) She is a devoted follower of the program, and she has a strong connection with her home meeting group. Respondent has not relapsed since starting AA meetings in October 2009.

10. Respondent was permitted to serve out her weekend work program obligation by working at the American Cancer Society Discovery Shop in Sunnyvale. Respondent has loved this experience, particularly speaking with cancer patients and survivors, and has stayed on past her 200-hour period of obligation. In a letter dated June 14, 2011, Manager Denise Crites attests that the shop is fortunate to have respondent.

11. Respondent has been divorced since December 2010. She and her ex-husband have a good, supportive relationship now. She admitted being an alcoholic to him, which has helped her in coming to terms with the end of their marriage.

12. Respondent is ready to return to work as a nurse. She feels that her life has gotten better little by little and she feels that she has become the best person she can be. She would like to return to an acute care setting, working in an orthopedic or medical/surgery unit. She loves working as a nurse and feels that it is a privilege to serve others.

13. Respondent's primary physician is internist Ravin Agah, M.D., Ph.D. Dr. Agah examined respondent in February 2011. In a declaration dated May 26, 2011, Dr. Agah certifies that: "her medical Are [sic] stable and her exam was unremarkable."

14. Eugene Schoenfeld, M.D., is certified by the American Society of Addiction Medicine for the treatment of alcohol and other drug dependencies. Dr. Schoenfeld was asked to evaluate respondent with respect to her alcoholism and her fitness for working as a nurse. Dr. Schoenfeld reviewed her criminal record, the accusation, her AA meeting attendance records, and a report from Sentencing Alternatives Program Inc. (pertaining to her community service work at the Discovery Shop.) Dr. Schoenfeld also conducted a 90-minute interview of respondent, and administered the eMini screen, a computerized psychological diagnostic test and found no psychological abnormalities.

Respondent reported that she has a strong family history of substance abuse. Respondent reported that before her marital separation she drank one-half bottle of wine per day; her consumption increased after the separation to one and one-half bottles per day. Respondent reported that she does not take any illicit drugs, but she takes Celexa, prescribed by Dr. Agar for depression, and prescription medication for blood pressure. Respondent reported that she has never been under the treatment of a psychiatrist, but did undergo marital counseling in 2008, and she saw a marriage and family therapist from 2008 to 2009.

Dr. Schoenfeld found no abnormalities of thought processes, and he found no psychological abnormalities. Dr. Schoenfeld concluded that respondent is aware of the influences of family and genetics on alcoholism; that she is fully aware that she is an alcoholic; and, that she is aware that "she must always be vigilant regarding her continued sobriety." In his opinion, "the most appropriate course" for respondent is to continue attending three AA meetings per week, with verified attendance. He further believes that a supervision requirement of probation would hamper respondent's ability to work as a nurse.

15. Respondent submitted two letters of reference. Registered nurse Jean Craig worked with respondent for over 20 years at El Camino Hospital. In a letter dated June 10, 2011, Craig attests that respondent is a professional, hardworking, conscientious and caring nurse. Ruth Lawrence has known respondent for 23 years socially, and respondent nursed her during hospitalizations. She attests that respondent is a hard-working, professional nurse.

Cost Recovery

16. The Department of Justice has charged the Board \$1,912.50 for attorney costs incurred as of June 13, 2011, in the prosecution of this matter. These costs are found to be reasonable.

17. No evidence was presented which would suggest that respondent is financially unable to reimburse the Board for its costs of investigation and enforcement.

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LEGAL CONCLUSIONS

First Cause for Discipline – Conviction of Substantially Related Crime

1. Business and Professions Code sections 490 and 2761, subdivision (f), provide that the Board of Registered Nursing may take disciplinary action against a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. Pursuant to California Code of Regulations, title 16, section 1444, a conviction shall be considered substantially related "if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare." Respondent's 2009 DUI conviction is her second DUI conviction. The offense is substantially related to the qualifications, functions, and duties of a registered nurse because it evidences, to a substantial degree, "the present or potential unfitness" on the part of respondent to discharge her duties as a registered nurse in a manner consistent with public safety. Cause for disciplinary action exists under these sections.

Second Cause for Discipline – Dangerous Use of Alcohol

2. Pursuant to Business and Professions Code section 2762, subdivision (b), the Board may take disciplinary action against a registered nurse who has used alcohol to an extent or in a manner dangerous to herself or the public. Based upon the matters set forth in Findings 3 and 4, cause for disciplinary action exists under this section.

Third Cause for Discipline – Conviction of Offense Involving Consumption of Alcohol

3. Pursuant to Business and Professions Code section 2762, subdivision (c), the Board may take disciplinary action against a registered nurse who has been convicted of a criminal offense involving the consumption of alcohol. Based upon the matters set forth in Findings 3 and 4, cause for disciplinary action exists under this section.

Disciplinary Determination

4. In determining the appropriate penalty, public safety is the Board's paramount concern. (Bus. & Prof. Code, § 2708.1.) By respondent's own admission, her two DUI convictions were the product of her problem with alcohol abuse. By getting into a car after drinking to excess, respondent demonstrated extremely poor judgment which put the public at serious risk of harm. To respondent's credit, she has taken positive steps to address her alcoholism and has been able to maintain sobriety for about two years. Respondent has complied with the terms and conditions of her criminal probation, but she remains on probation until June 2011. Based upon all the evidence presented, it is determined that notwithstanding the recentness of her DUI conviction, respondent has presented sufficient evidence of rehabilitation so that the protection of the public does not compel revocation of her registered nurse license.

Where a licensee has been convicted of a drug or alcohol-related offense, the Board's disciplinary guidelines (see Cal. Code Regs., tit. 16, § 1444.5) include probation conditions which require the licensee to undergo substance abuse treatment and rehabilitation, physical and mental health examinations, submit to biological fluid testing, participate in therapy or counseling, and to abstain from the use of alcohol and drugs. Complainant argues that all of these requirements should be imposed in this case.

Respondent requests that she be permitted to be exempt from some of these requirements. She asked to be excluded from the standard condition of supervision because that requirement will make it difficult to find employment. This request is found to be unreasonable. Respondent has not worked as a nurse for two years. There are no evaluations from her last employer regarding her nursing ability. That her last employer suggested she seek counseling based on her behavior at work, suggests all was not going well at the workplace. Finally, her recovery from alcohol abuse is in its early stages. All of these factors warrant a period of supervised practice for public protection.

Respondent requests to be exempted from physical and mental health examinations as they are redundant to the reports she submitted at hearing. The report from Dr. Agah falls short of the physical assessment contemplated by probation condition 14. The same is true of the report of Dr. Schoenfeld, with respect to the mental health examination contemplated by probation condition 18.

Lastly, she requests that she not be required to participate in a treatment/rehabilitation program for chemical dependence. It appears that respondent's current program of attending AA meetings three times per week is working for her, which is supported by the report of Dr. Schoenfeld. The probation monitor should consider Dr. Schoenfeld's report in determining whether a continued verified AA program is sufficient to satisfy the treatment/rehabilitation program required by probation condition 15.

Cost Recovery

5. Business and Professions Code section 125.3 provides that a licensee found to have violated licensing laws may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." As set forth in Finding 16, the Board's incurred fees of \$1,912.50 in connection with the investigation and enforcement of this case are reasonable.

6. Pursuant to *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, when imposing costs the Board must also consider the following factors: whether respondent succeeded in obtaining a dismissal of charges or a reduction in the severity of discipline; whether respondent presented a "colorable challenge" to the proposed discipline; whether respondent possessed a "subjective good faith belief" in the merits of her position; and, whether respondent is financially able to pay such costs. (*Id.* at p. 45). Additionally, the Board may not assess full enforcement costs when to do so would penalize

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an individual who has committed some misconduct, but who has used the hearing process to reduce the severity of the discipline imposed. (*Ibid.*) Upon consideration of each of the *Zuckerman* factors, it is concluded that respondent has not established a basis to reduce or eliminate costs. The Board may properly recover its full costs from respondent.

ORDER

Registered nurse license number RN 284260 issued to respondent Sharon Dowson is revoked pursuant to Legal Conclusions 1 through 3, jointly and individually. However, the revocation is stayed and respondent is placed on probation for three years on the following conditions:

SEVERABILITY CLAUSE – Each condition of probation contained herein is a separate and distinct condition. If any condition of this order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this order, and all other applications thereof, shall not be affected. Each condition of this order shall separately be valid and enforceable to the fullest extent permitted by law.

- (1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of this decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

- (2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

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- (3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
- (4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled if and when she resides outside of California. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

- (5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verifications of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

- (6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with this section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

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If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probationary period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

- (7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care-related employment.

In addition to the above, respondent shall notify the Board in writing within 72 hours after she obtains any nursing or other health care-related employment. Respondent shall notify the Board in writing within 72 hours after she is terminated or separated, regardless of cause, from any nursing, or other health care-related employment with a full explanation of the circumstances surrounding the termination or separation.

- (8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding her level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
 - (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by respondent with or without respondent present.
- (9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board-approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

- (10) COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

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Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above-required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

- (11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,912.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.
- (12) VIOLATION OF PROBATION - If respondent violates the conditions of her probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

- (13) LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

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- (14) PHYSICAL EXAMINATION: Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent, with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's Office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits her to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

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Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM PSYCHOTROPIC (MOOD-ALTERING) DRUGS:

Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within 14 days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time-limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

- (17) SUBMIT TO TESTS AND SAMPLES: Respondent, at her expense, shall participate in a random, biological fluid testing or drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of her current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

- (18) MENTAL HEALTH EXAMINATION - Respondent shall, within 45 days of the effective date of this decision, have a mental health examination, including psychological testing as appropriate, to determine her capability to perform the duties of a registered nurse. The examination must be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's Office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension shall not apply to the reduction of this probationary time period.

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If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

- (19) THERAPY OR COUNSELING PROGRAM - Respondent, at her expense, shall participate in an ongoing counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: 6/29/2011



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2011-639

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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. **2011- 639**

12 **SHARON LYNNE DOWSON**
13 **758 Rustic Lane**
Mountain View, CA 94040

A C C U S A T I O N

14 **Registered Nurse License No. RN 284260**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about August 31, 1977, the Board issued Registered Nurse License Number
23 RN 284260 to Sharon Lynne Dowson (Respondent). The license was in full force and effect at
24 all times relevant to the charges brought herein and will expire on March 31, 2011, unless
25 renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Business and Professions Code (Code) section 2750 provides, in pertinent part, that
2 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
3 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
4 Practice Act.

5 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
6 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
7 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
8 (b), the Board may renew an expired license at any time within eight years after the expiration.

9 STATUTORY / REGULATORY PROVISIONS

10 6. Code section 490 states:

11 “(a) In addition to any other action that a board is permitted to take against a licensee, a
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
14 or profession for which the license was issued.

15 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
16 discipline a licensee for conviction of a crime that is independent of the authority granted under
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the licensee's license was issued.

19 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. An action that a board is permitted to take
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under Section
24 1203.4 of the Penal Code.

25 “(d) The Legislature hereby finds and declares that the application of this section has been
26 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
27 554, and that the holding in that case has placed a significant number of statutes and regulations
28 in question, resulting in potential harm to the consumers of California from licensees who have

1 been convicted of crimes. Therefore, the Legislature finds and declares that this section
2 establishes an independent basis for a board to impose discipline upon a licensee, and that the
3 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
4 to, but rather are declaratory of, existing law.”

5 7. Code section 2761, subdivision (f), provides that the Board may take disciplinary
6 action against a licensed nurse for “[c]onviction of a felony or of any offense substantially related
7 to the qualifications, functions, and duties of a registered nurse, in which event the record of the
8 conviction shall be conclusive evidence thereof.”

9 8. Code section 2762 states, in pertinent part:

10 “In addition to other acts constituting unprofessional conduct within the meaning of this
11 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
12 chapter to do any of the following:

13 “...

14 “(b) Use any controlled substance as defined in Division 10 (commencing with Section
15 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
16 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
17 himself or herself, any other person, or the public or to the extent that such use impairs his or her
18 ability to conduct with safety to the public the practice authorized by his or her license.

19 “(c) Be convicted of a criminal offense involving the prescription, consumption, or
20 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
21 or the possession of, or falsification of a record pertaining to, the substances described in
22 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
23 thereof.”

24 9. California Code of Regulations, title 16, section 1444, states:

25 “A conviction or act shall be considered to be substantially related to the qualifications,
26 functions or duties of a registered nurse if to a substantial degree it evidences the present or
27 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
28 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

1 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
2 subdivision (d) of Penal Code Section 11160.

3 “(b) Failure to comply with any mandatory reporting requirements.

4 “(c) Theft, dishonesty, fraud, or deceit.

5 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
6 Penal Code.”

7 COST RECOVERY

8 10. Code section 125.3 provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licensee found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of a Substantially Related Crime)

14 11. Respondent is subject to disciplinary action under Code sections 490 and 2761,
15 subsection (f), for conviction of a crime or crimes substantially related to the qualifications,
16 functions and duties of a registered nurse. The circumstances are as follows:

- 17 a. On or about March 22, 2010, in Santa Clara County Superior Court, Case No.
18 BB943919, Respondent was convicted of having violated Vehicle Code (VC) section
19 23152(b) (driving with a blood alcohol level of .08 percent or more), with an
20 enhancement for having a blood alcohol level of .15 percent or more, and a prior
21 conviction for having violated VC section 23152 on or around December 23, 2000, in
22 San Mateo County Superior Court, Case No. N309564.
- 23 b. Imposition of sentence was suspended and Respondent was granted three years court
24 probation subject to enrollment in and completion of a Multiple Offender Program
25 (MOP).
- 26 c. Respondent's conviction resulted from her arrest on or about October 17, 2009, after
27 the vehicle she was driving collided with a parked car on Miramonte Avenue in
28 Mountain View, California, damaging both vehicles. Respondent provided police

1 with two breath samples by which her blood alcohol level was measured at 0.20
2 percent and 0.21 percent, respectively.

3 SECOND CAUSE FOR DISCIPLINE

4 (Dangerous or Injurious Use of Alcohol)

5 12. Respondent is subject to disciplinary action under Code section 2762, subsection (b),
6 for the use alcohol to an extent or in a manner dangerous or injurious to herself, any other person
7 or the public, or to the extent that such use impairs her ability to safely practice nursing. The
8 circumstances are described in paragraph 11, above.

9 THIRD CAUSE FOR DISCIPLINE

10 (Conviction of a Crime Involving Alcohol)

11 13. Respondent is subject to disciplinary action under Code section 2762, subsection (c),
12 for conviction of a crime or crimes involving consumption or self-administration of alcohol. The
13 circumstances are described in paragraph 11, above.

14 PRAYER

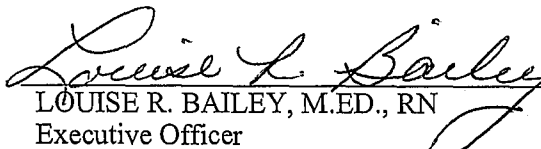
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Revoking or suspending Registered Nurse License Number RN 284260, issued to
18 Sharon Lynne Dowson;

19 2. Ordering Sharon Lynne Dowson to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3;

22 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 1/18/11

25 
26 LOUISE R. BAILEY, M.ED., RN
27 Executive Officer
28 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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